IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PEITION NO.8709 OF 2004

Dr. J.A. Patil. ...Petitioner.

Versus

The State of Maharashtra & Ors. ...Respondents.

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Mr.S. P. Saxena for the Petitioner.
Mr. V. P. Malwankar, AGP for Respondent Nos.1 and 2.

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CORAM : KSHITIJ R. VYAS, C.J. &
DR. D.Y. CHANDRACHUD, J.

May 2, 2006.

ORAL JUDGMENT (Per Dr. D.Y. Chandrachud, J.) :

The Petitioner attained the age of superannuation on 30th June 1980 on which date he was holding the post of Director of Seeds Certification in the State of Maharashtra. The post was a Class-I post with a pay scale of Rs.1100-1700 at the time when the Petitioner superannuated. After the reports of the Fourth and Fifth Pay Commissions, the pay scale of the Petitioner, for the purposes of computing pensionary benefits was converted into the following equivalent pay scales namely:

As on 1-1-1986 Rs.3200-4625

As on 1-1-1996 Rs.10,650-15,850

On that basis, the pension of the Petitioner was revised and he was paid arrears. The relief sought by the Petitioner was that, he was entitled to a revision/refixation of his pension in the scale of pay of Rs.14,300-18,300 with effect from 1st January 1996 and that his pension was required to be fixed at Rs.7,150/- per month being 50% of the minimum of the revised scale of pay. In order to support this submission, the Petitioner relied upon a Government Resolution dated 31st March 1995 under which, with effect from the date of the resolution, the post of Director of Seeds Certification which was formerly in the cadre of Superintending Agriculture Officer was upgraded to the status of Additional Director of Agriculture. Though the Petitioner admitted that the post of Director of Seeds Certification was upgraded with effect from 31st March 1995, his contention was that he would be entitled to the refixation of his pension on the basis of the pay scale of the upgraded post.

2. The Tribunal rejected the contention of the Petitioner by its order that is impugned in these proceedings. The Tribunal held

that in the present case the original post of Director of Seeds Certification was in the cadre of Superintending Agriculture Officer and on the date on which the Petitioner retired, that was the post which he held. The Government Resolution dated 31st March 1995 showed that the entire organization of Seeds Certification was restructured. 319 posts were required to be reduced. One post in the status of Additional Director of Agriculture, 7 posts in the Maharashtra Agricultural Service Class-I and 31 posts of Agricultural Assistants were to be newly created. The preamble to the GR mentions that there were 685 sanctioned posts in the Maharashtra Seeds Certification Organization of which 381 were technical posts and 304 were other posts. Those employees were on deputation from the Agriculture Department. A Committee was established by the State Government for recommending measures to make the Seeds Certification Organization financially self-sufficient and in pursuance of the recommendations of the Committee, a proposal for reorganization and restructuring was under consideration of the Government. Government thereupon took a decision to reduce the number of employees and to

restructure the Department. In that context the post of Director of Seeds Certification which hitherto was equivalent to a Superintending Agriculture Officer (the position as it obtained on the date of retirement of the Petitioner) was restructured so as to be equivalent to the status of an Additional Director of Agriculture in the higher pay scale. The Tribunal, while interpreting this GR held that even if the nomenclature of the post continued to be that of Director of Seeds Certification, Government had as an administrative measure, restructured the organization by creating a new post of the status of Additional Director of Agriculture. The post of Superintending Agriculture Officer which was equivalent to the post held by the Petitioner and the post of Additional Director of Agriculture were not on par. In these circumstances, the Tribunal held that the post held by the Petitioner and by a person after 31st March 1995 was not the same or of the same status. The application was thereupon dismissed.

3. On behalf of the Petitioner, reliance is placed on the Government Resolution dated 15th November 1999 by which the

pensionary benefits of all the pre 1986 pensioners and normal pensioners were revised with effect from 1st January 1996 upon the implementation of the recommendations of the Fifth Pay Commission. The Government Resolution in so far as is material provides as follows :

> "In accordance with the provisions contained in Maharashtra Civil Services (Pension) Rules, 1982 and the Government orders issued thereunder, at present pension of all pre-1986 pensioners is based on the average pay drawn by them during the last 10 months immediately preceding the date of retirement and similarly family pension is based on the last pay drawn by the deceased Government servant/pensioner. It has now been decided that the pension of all the pre-1986 retirees may be updated by notional fixation of their pay as on 1st January 1986 by adopting the same formula as for the serving employees and thereafter for the purpose of consolidation of their pension/family pension as on 1st January 1986, they may be treated alike those who have

retired on or after 1st January 1986. Accordingly, it has now been further decided that pay of all those State Government servants who retired prior to 1st January 1986 and were in receipt of pension as on 1st January 1986 and also in cases of those State Government servants who died prior to 1st January 1986, in respect of whom family pension was being paid on 1st January 1986, will be fixed on notional basis in the revised scale of pay for the post held by the pensioner at the time of retirement or on the date of death of Government servant, introduced subsequent to retirement/death of Government servant consequent upon promulgation of Revised Pay Rules on implementation of recommendations of successive Pay Commissions or of award of Board of Arbitration or judgment of Court or due to general revision of the scale of pay for the post etc."

Clause (2) of the GR which has been extracted hereinabove reflected a decision of the Government to the effect that the pay of Government employees who retired prior to 1st January 1986 and

were in receipt of pension as on that date would have to be fixed on a notional basis in the revised scale of pay for the post held by the pensioner at the time of retirement. In the case of the Petitioner, therefore, the point to be decided is what post was held by him at the time of his retirement. The Petitioner retired as Director of Seeds Certification on 30th June 1980 and on the date of his retirement, the post that was held by the Petitioner was equivalent to that of the Superintending Agriculture Officer. Fifteen years after the retirement of the Petitioner on 31st March 1995, the State Government decided to restructure the Maharashtra Seeds Certification Organization to make it financially viable. The department came to be restructured by a reduction of certain posts and by the creation of certain posts. The process of restructuring has been adverted to in a considerable degree of detail in the order of the Tribunal, a gist of which has been referred to in the earlier part of this judgment. For the first time on 31st March 1995, the post of Director of Seeds Certification came to be treated as equivalent to the post of Additional Director for Agriculture in a higher pay scale. Therefore, within the meaning of clause 2 of the GR dated

15th November 1999, it cannot be said that the post which was held by the Petitioner at the time of his superannuation was equivalent to the post of an Additional Director of Agriculture. The case of the Petitioner for the refixation of his pay in the pay scale of a post equivalent to the Additional Director of Agriculture, is hence without any basis or foundation.

4. The judgment of the Delhi High Court in **S.C. Parasher vs. Union of India** (CWP 678 of 2003, decided on 9th December 2003) would not assist the case of the Petitioner. That was a case where the Petitioner had retired as Deputy Director General in All India Radio, in the pay scale of Rs.2000-2250. The scale of pay of that post was revised with effect from 13th January 1984 and thereafter with effect from 1st January 1996 on the recommendations of the Fifth Pay Commission. On 17th December 1998, the Union of India issued a memorandum to the effect that from 1st January 1996, the pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the minimum pay in the revised scale of pay introduced from that date, of the post last held by the pensioner. However, a clarificatory

memorandum was issued on 11th May 2001 to the effect that pension of all pensioners shall not be less than 50% of the minimum of the corresponding scale as on 1st January 1996 of the scale of pay held by the pensioner at the time of superannuation or retirement. The Delhi High Court held that the clarificatory memorandum was not in essence a clarification at all since it virtually overruled a part of the original memorandum. The original memorandum dated 17th December 1998 fixed the pension on the basis of the scale of pay of the post last held by the pensioner, while the clarificatory memorandum dated 11th May 2001 fixed the pension on the basis of the scale of pay last held by the pensioner regardless of his post. The Delhi High Court held that in the guise of the clarification, the entitlement could not have been taken away. Moreover, an artificial discrimination was made between the pensioners and those who are in receipt of family pension. It was on these facts that the Delhi High Court held that the Petitioner before it was entitled to pension with effect from 1st January 1996 on the basis of the scale of pay applicable to the post last held by him. The judgment of the Delhi High Court does

not advance the case of the Petitioner. The post which was last held by the Petitioner in the present case was a post which was equivalent to a Superintending Agriculture Officer. As we have noted, it was only on 31st March 1995 that the Maharashtra Seeds Certification Organization was restructured by creating a post of Director of Seeds Certification in the cadre of the Additional Director for Agriculture. That was not the post which was ever held by the Petitioner. The Tribunal was, in these circumstances, not in error in rejecting the contention of the Petitioner. In these circumstances, we do not find any reason or justification to exercise our jurisdiction under Article 226 of the Constitution. The judgment and order of the Administrative Tribunal does not suffer from any error apparent on the face of record much less an error of jurisdiction. The petition shall accordingly, stand dismissed. In the circumstances of the case, there shall be no order as to costs.

CHIEF JUSTICE

Dr.D. Y. Chandrachud, J.